

## CHAPTER 6 COMPETITIVE SEALED BIDDING FOR CONSTRUCTION CONTRACTS

### 6.1 RELATED STATUTORY AUTHORITY

- A. SC Law Section 10-1-180 requires the State Engineer to determine the enforcement and interpretation of the building codes and reference standards to state buildings.
- B. SC Law Section 11-35-1520 requires that contracts amounting to \$25,000 or more shall be awarded by competitive sealed bidding except as otherwise provided in SC Law Section 11-35-1510.
- C. SC Law Section 11-35-1810 requires that the responsibility of the bidder shall be determined for each contract let by the State.
- D. SC Law Section 11-35-1825 permits prequalification of construction bidders for unique construction, or for projects over ten million dollars in value, in accordance with OSE criteria and procedure.
- E. SC Law Section 11-35-3020 requires that all state construction contracts be awarded by competitive sealed bidding, except as permitted therein.
- F. SC Law Section 11-35-3020 requires that the agency send all responsive bidders a copy of the bid tabulation within 10 working days following the bid opening.
- G. SC Law Section 11-35-3020 permits negotiations after unsuccessful competitive sealed bidding within the limitations described by the law.
- H. SC Law Section 11-35-3030 requires that all competitive sealed bidding for state construction contracts in excess of \$100,000 be provided with bid security.
- I. SC Law Section 11-35-3030 requires that all construction contracts awarded by competitive sealed bidding valued in excess of \$100,000 shall be provided with a performance bond in the full amount of the contract.  
**Note:** OSE requires all construction contracts in excess of \$50,000 to be provided with a performance bond in the full amount of the contract.
- J. SC Law Section 29-6-250 requires that all construction contracts to improve real property in excess of \$50,000 shall be provided with a labor and materials payment bond in the full amount of the contract.
- K. SC Law Section 11-35-3310 permits indefinite delivery contracts for construction to be awarded pursuant to the procedures set forth in Section 11-35-3020.
- L. SC Law Section 11-35-3310 permits indefinite delivery contracts for architectural-engineering and land surveying services to be awarded pursuant to the procedures set forth in Section 11-35-3220. Small indefinite delivery contracts for architectural-engineering and land surveying services may be procured as provided in Section 11-35-3230.
- M. SC Law Section 11-35-4210 permits the State Engineer to resolve protested construction solicitations and awards.
- N. SC Law Section 40-11-260 requires general and mechanical contractors to be licensed for projects valued at \$5,000 or more.
- O. SC Law Section 40-70-29 requires a valid license to engage in a burglar or fire alarm business or activity.
- P. SC Regulation 19-445.2050 permits only the information disclosed at the bid opening to be considered as public information under the Freedom of Information Act until the notice of intent to award is issued.



## 6.2 RELATED OSE FORMS

The following OSE standard forms are referred to in this Chapter. Reproducible copies of these forms may be found in the Appendix indicated.

- A. Form SE-310, *Invitation for Construction Bids*, which may be found in Appendix B.
- B. Form SE-330, *Bid Form*, which may be found in Appendix B.
- C. Form SE-335, *Bid Bond*, which may be found in Appendix B.
- D. Form SE-350, *Questionnaire for Contractors*, which may be found in Appendix C.
- E. Form SE-355, *Performance Bond*, which may be found in Appendix B.
- F. Form SE-357, *Labor and Material Payment Bond*, which may be found in Appendix B.
- G. Form SE-370, *Notice of Intent to Award*, which may be found in Appendix C.
- H. Form SE-380, *Request for Authority to Execute a Construction Contract*, which may be found in Appendix C.
- I. Form SE-385, *Building Permit*, which may be found in Appendix C.
- J. Form SE-390, *Notice to Proceed*, which may be found in Appendix C.

## 6.3 APPLICABILITY

- A. All construction contracts exceeding \$25,000, except emergency and sole source, shall be procured by competitive sealed bidding.
- B. "Construction" is defined as the process of building, altering, repairing, remodeling, improving, or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings or real property.
- C. The competitive sealed bidding phase of a construction project begins with the advertisement of the project in *South Carolina Business Opportunities (SCBO)*. It ends with the signing of the construction contract by both parties and the issuance of the SE-390.
- D. Agencies shall use the OSE-approved contract documents and forms for all construction procurements. These documents shall be used without modification or substitution unless approved in writing by the OSE.

## 6.4 ADVERTISING PROJECTS FOR BIDDING

- A. All construction contracts procured by competitive sealed bidding with a construction budget exceeding \$25,000 shall be advertised in *SCBO*.
  - 1. The advertisement that appears in *SCBO* shall be the official Invitation for Construction Bids.
  - 2. Advertisement of the project in other media, including Dodge and AGC plan rooms, is permissible. However, errors in advertisements other than *SCBO* shall not constitute a basis for a protest.
- B. An Agency may submit advertisements for construction contracts within the agency's construction certification directly to *SCBO*, using Form SE-310.
- C. An Agency must submit advertisements for construction contracts that exceed the agency's construction certification to the OSE, using Form SE-310, for OSE's review and approval. After a satisfactory review of the bid documents, the OSE will approve the SE-310 and submit it to *SCBO* for publication. See Chapter 1 for the *SCBO* publication schedule.



## 6.5 PRE-BID CONFERENCES AND SITE VISITS

- A. Pre-bid conferences and site visits may be either mandatory or non-mandatory. See Chapter 5 for recommendations concerning the number of days between advertisement and pre-bid, and pre-bid and bid opening. All pre-bid conferences must be advertised in *SCBO*.
- B. Non-Mandatory pre-bid conferences and site visits do not require attendance by prime bidders in order to be eligible to bid a project.
- C. Mandatory pre-bid conferences and site visits are recommended when projects are large, complex, or unusual in nature.
  - 1. More than one mandatory pre-bid conference may be scheduled when it is in the best interest of the Agency.
  - 2. Prime bidders are required to be represented at a mandatory pre-bid conference.
    - (a) Only those prime bidders that are represented at a mandatory pre-bid conference will be eligible to bid the project.
    - (b) When multiple mandatory pre-bid conferences are held, prime bidders are required to attend only one of them.
  - 3. If only one prospective bidder is represented at a mandatory pre-bid conference, the pre-bid does not have to be canceled provided:
    - (a) An additional mandatory or non-mandatory pre-bid conference is scheduled for a later date; and,
    - (b) The additional pre-bid conference is advertised in *SCBO*. (Note: OSE recommends a minimum of 10 days between a mandatory pre-bid conference and any additional pre-bid conference); and,
    - (c) A new bid date is scheduled in the *SCBO* advertisement. (Note: OSE recommends a minimum of 14 days between an additional pre-bid conference and the new bid date); and,
    - (d) At least one additional prospective bidder attends an additional mandatory pre-bid conference.
  - 4. When a second pre-bid conference is scheduled for a later date and advertised in *SCBO* and:
    - (a) If only one prospective bidder was represented at the first mandatory pre-bid conference and no additional prospective bidders attend a second mandatory pre-bid conference, then the Agency shall cancel the Invitation for Bids. The Agency may then re-advertise the project in *SCBO* with new pre-bid and bid dates.
    - (b) If only one prospective bidder was represented at the first mandatory pre-bid conference and if no additional prospective bidders attend a second non-mandatory pre-bid conference, the Agency may proceed with the Invitation for Bids.
  - 5. If no prospective bidder is represented at a first mandatory pre-bid conference, the Invitation for Bid may be canceled. If the Invitation is not canceled, the project shall be re-advertised in *SCBO* with either:
    - (a) No pre-bid conference scheduled;
    - (b) A non-mandatory pre-bid conference scheduled for a later date; or
    - (c) A mandatory pre-bid conference scheduled for a later date.
- D. The Agency, A/E, and the OSE representative should attend all pre-bid conferences for projects exceeding the agency construction certification. If the project is within the agency certification, the agency may request an OSE representative to attend.
- E. The pre-bid conference should be conducted by the Agency or the A/E and they shall provide sign-in sheets for attendees to register their attendance. Table 6.5-1 contains a suggested list of pre-bid



discussion items, although selected portions may be deleted at the discretion of the OSE, A/E or Agency representative conducting the pre-bid conference.

- F. The Bid Documents (project manual and drawings) should be discussed at the pre-bid conference in sufficient detail to ensure that all prospective bidders understand the scope of the project.

## 6.6 ADDENDA

- A. An addendum shall be issued for, but not limited to, the following reasons:
  - 1. To list all firms represented at a mandatory pre-bid conference;
  - 2. To respond to questions received during the bidding period;
  - 3. To list all substitutions approved by the A/E or Agency;
  - 4. To clarify items in the contract documents prior to the date for the receipt of bids; and
  - 5. To postpone the date for the receipt of bids, to reschedule a bid opening, or to cancel the invitation for bids.
- B. When an addendum is issued to reschedule a bid opening, the OSE recommends that the new date for the bid opening be a minimum of 14 calendar days from the issue date of the addendum.
- C. No addenda shall be issued later than the fifth calendar day prior to the date for receipt of bids. (i.e., projects being bid on a Tuesday require that all addenda be issued no later than midnight of the prior Thursday). Addenda postponing the date for receipt of bids or withdrawing the invitation for bids may be issued at any time prior to the time set for bid opening.
- D. Addenda shall be mailed or delivered to all who are known by the Agency or A/E to have received a complete set of bidding documents or attended a pre-bid conference.
- E. It is the responsibility of bidders to determine, prior to submitting a bid, that all addenda issued have been received. The bidders shall acknowledge their receipt of the addenda on the bid form.

## 6.7 BID POSTPONEMENT

- A. A bid opening may be postponed for any of the following reasons:
  - 1. Causes beyond the control of the bidders (e.g. flood, fire, accident, weather conditions);
  - 2. Emergency or unanticipated events that interrupt normal government operations;
  - 3. Revision of specifications and/or drawings; or
  - 4. For other reasons, when postponement is clearly in the best interest of the State.
- B. Bids may be postponed by an addendum issued at any time prior to the time set for the bid opening.
  - 1. If there is not enough time to issue a written addendum prior to the time set for the bid opening, bidders shall be notified by telephone or other appropriate means.
    - (a) The A/E or Agency shall verify, if at all possible, receipt by the bidders of the notice of postponement.
    - (b) Addendum sent by telephone or other appropriate means shall be followed immediately by a written copy of the addendum.
  - 2. The addendum shall notify the bidders of the postponement of the original bid date and establish a new bid date, which shall be no earlier than the fifth calendar day after the date of issue of the addendum postponing the original bid date.
- C. When time permits, the notification of the postponement of bids shall be advertised in *SCBO*.



<b>Table 6.5-1. PRE-BID CONFERENCE DISCUSSION ITEMS</b>	
<b>Discussion Topic</b>	<b>Discussion Items</b>
<b>Written Word</b>	<ol style="list-style-type: none"> <li>1. Only the written word as contained in the Bid Documents, including any addenda that may be issued, shall be valid.</li> <li>2. It is the bidders' responsibility to read and review all of the Bid Documents, including addenda.</li> <li>3. Statements made by the A/E, agency and/or the OSE representative are for the sole purpose of calling the bidders' attention to items of importance in the Bid Documents.</li> <li>4. All questions or requests for clarification must be submitted in writing. All responses will be made in the form of addenda to the bid documents.</li> </ol>
<b>SE-310, Invitation for Construction Bids</b>	<ol style="list-style-type: none"> <li>1. <i>(When required)</i> Each bid shall have bid security of not less than 5% of the sum of the base bid.</li> <li>2. <i>(When required)</i> The successful bidder shall provide a Performance Bond and a Labor and Material Payment Bond, each in the full amount of the contract price. Refer to paragraph 6.19.</li> <li>3. Bidders and all subcontractors shall be licensed in accordance with the requirements of the Contractors' Licensing Board.</li> <li>4. Mandatory pre-bid conference requirements: <ol style="list-style-type: none"> <li>a. All attendees shall provide the name of the firm they represent on the sign-in sheet. This shall be the same name as shown on their SC Contractor's License, and this shall be the same name that will be shown on the Bid Form.</li> <li>b. Attendees shall also provide the telephone and fax numbers and the mailing and delivery addresses of the firm they represent.</li> <li>c. These addresses will be used by the A/E or agency for the distribution of addenda.</li> <li>d. Only firms listed on the sign-in sheet shall be eligible to bid on the project.</li> </ol> <p><b>NOTE:</b> At non-mandatory pre-bids, sign-in requirements are optional.</p> </li> <li>5. Review the time, date and location of the bid opening.</li> <li>6. Bidders shall be responsible for having their bid at the designated place for receiving bids no later than the time set for the bid opening. Once the bidding has been declared closed, all late bids, including bids improperly delivered, shall be rejected as being nonresponsive.</li> </ol>
<b>A701 and 00201-OSE</b>	<ol style="list-style-type: none"> <li>1. A701, Paragraph 3.3, Substitutions: <ol style="list-style-type: none"> <li>a. 00201-OSE, Subparagraph 3.3.1: Materials and products listed in the Bid Documents establish a standard of required function, dimension, appearance and quality to be met by a proposed substitution.</li> <li>b. 00201-OSE, Subparagraph 3.3.1: Reference in the Bid Documents to the words 'or equal' and 'or approved equal' shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition.</li> <li>c. A701, Subparagraph 3.3.2: Requests for substitutions must be submitted to the A/E at least 10 days prior to the bid date. Proof of equality of substitutions is the responsibility of the proposer. The A/E's decision to approve or disapprove of the requested substitutions shall be final.</li> <li>d. A701, Subparagraph 3.3.3: The A/E shall include in an addendum the approved substitutions. Substitution requests not approved by the A/E may be listed in an addendum at the A/E's option.</li> </ol> </li> <li>2. A701, Paragraph 3.4, Addenda: <ol style="list-style-type: none"> <li>a. 00201-OSE, Subparagraph 3.4.3: No addenda will be issued later than the fifth calendar day prior to the date for receipt of bids, except addenda postponing the date of receipt of bids or withdrawing the invitation for bids (i.e., projects being bid on a Tuesday require</li> </ol> </li> </ol>



Table 6.5-1. PRE-BID CONFERENCE DISCUSSION ITEMS

Discussion Topic	Discussion Items
	<p>that all addenda be issued no later than midnight of the prior Thursday).</p> <p>b. A701, Subparagraph 3.4.4: It is the bidder's responsibility to determine, prior to submitting a bid, that all addenda issued have been received.</p> <p><b>NOTE:</b> If the pre-bid is mandatory, the bidders should verify that their firm's name has been included in an addendum.</p> <p>3. 00210-OSE, Subparagraph 4.1.1: Bidder shall not qualify his bid.</p> <p>4. 00201-OSE, Subparagraph 4.3.3.2: : Bids sent by mail or other special delivery service (UPS, FED-EX, etc.) should be labeled "Sealed Bid Enclosed" and shall be received at the address indicated prior to the time of the bid opening. Bids not received prior to the time of the bid opening shall be rejected as being nonresponsive.</p> <p>5. 00201-OSE, Subparagraph 5.3.2: List of reasons for which bids will be rejected. Bidders should use this as a check list prior to submitting bid.</p> <p>6. 00201-OSE, Subparagraph 5.3.3: List of reasons for which bids will not be rejected.</p>
SE-330, Bid Form	<p>1. Page BF-1:</p> <p>a. Refer to item 2. Bidders shall indicate the form of the bid security.</p> <p>b. Refer to item 4. Bidders shall acknowledge all addenda.</p> <p>c. Refer to item 5. By submitting a bid, Bidders agree that the Base Bid price and the Bid Alternate(s) price(s) shall not be revoked or withdrawn for the number of calendar days indicated.</p> <p>d. Refer to item 6.1. Base Bid shall be shown in figures only.</p> <p>2. Page BF-1A (when included)</p> <p>a. Refer to item 6.2. Bidders shall strike through "ADD" or "DEDUCT" so as to clearly indicate the price adjustment for each Alternate.</p> <p>b. Refer to item 6.3. The Bidder should furnish requested unit prices. The agency reserves the right to include or not to include the unit prices in the contract and to negotiate unit prices with the Bidder. Unit prices have no bearing on the contract award (unless the bid is a unit price bid) and need not be read at the bid opening.</p> <p>3. Page BF-2</p> <p>a. Refer to item 1. A SUBCONTRACTOR is an entity who performs work at the jobsite. Material suppliers, manufacturer's and fabricators are not subcontractors unless they also perform work at the jobsite.</p> <p>b. Refer to item 2. Bidders shall list the name of the subcontractor(s) for each subcontractor specialty identified. Bidders should not add additional subcontractor specialties.</p> <p>c. Refer to item 3. If a Bidder intends to perform any portion of the work for a listed subcontractor specialty with its own employees, and if the Bidder is qualified to perform the work, the Bidder shall list their company name in the appropriate place as the subcontractor.</p> <p>d. Refer to item 4. Failure by the Bidder to list subcontractors shall render the Bid nonresponsive.</p> <p>e. When a Bidder intends to use multiple subcontractors for a specific subcontractor specialty, all of the subcontractors should be listed on the same line as the specialty, separated by the word "and". <b>Do not</b> use the word "or" to separate subcontractor names for the same specialty.</p> <p>f. Qualified Bidders intending to perform work along with a subcontractor for a specific subcontractor specialty, shall list their company name and the subcontractor(s) on the same line as the specialty, separated by the word "and".</p>



Table 6.5-1. PRE-BID CONFERENCE DISCUSSION ITEMS	
Discussion Topic	Discussion Items
	<p>g. <b><u>Do not</u></b> use the word "or" to separate subcontractors' names from the prime bidder's name.</p> <p>h. The method of listing subcontractors for Alternates shall be the same as for the Base Bid.</p> <p>i. Subcontractors listed for Alternates may be used for all of the Alternates and the Base Bid work, if the Alternates are accepted.</p> <p>j. A subcontractor listed for a Base Bid specialty may not be used for listed Alternate work unless the Base Bid subcontractor is listed for the Alternate.</p> <p>Page BF-3:</p> <p>a. Time of Contract Performance</p> <p>(1) Refer to item 1. Indicate that the DATE OF COMMENCEMENT shall be established in Form SE-390.</p> <p>(2) Refer to items 2 and 3. Review the number of calendar days allowed for construction to reach Substantial Completion and Final Completion.</p> <p>b. Liquidated Damages and Early Completion</p> <p>(1) Refer to item 1 and 2. Review the liquidated damages amounts to be applied for failure to reach both Substantial Completion and Final Completion within the contract time limits.</p> <p>(2) Refer to item 3. When applicable, review any bonus to be paid if the contractor achieves early Substantial Completion in accordance with the contract documents.</p> <p>c. Agreements</p> <p>(1) Refer to item 1. An incomplete bid, or information not requested that is written on or attached to the Bid Form, could be considered a qualification of the Bid and may be cause for rejection of the Bid.</p> <p>(2) Refer to item 2. Failure of the Bidder to indicate a price for a Bid Alternate shall render the Bid non-responsive. Review the directions for bidding a Bid Alternate.</p> <p>(3) Refer to item 3. Bid Alternates may be accepted by the Agency in any combination or order at the sole discretion of the Agency.</p> <p>(4) Refer to item 5. Failure of the Bidder to provide name(s) for any listed SUBCONTRACTOR SPECIALTY shall render the Bid non-responsive.</p> <p>Page BF-4</p> <p>a. Refer to item 7. To support the Agency's evaluation of the Bidder's responsibility, the agency may request the prospective contractor to furnish a completed OSE form SE-350.</p> <p>b. Refer to item 8. By signing the Bid, the Bidder certifies that it will provide a 'Drug-Free Workplace' as required by SC law.</p> <p>c. Refer to item 9. The project may be canceled for the convenience of the State at any time prior to the issuance of the Notice to Proceed.</p> <p>d. If an electronic Bid Bond is to be provided, the bidder shall indicate the electronic bid bond number and provide the proper signature and title in the spaces provided.</p> <p>e. Provide all of the requested information at the bottom of page BF-4.</p>



**Table 6.5-1. PRE-BID CONFERENCE DISCUSSION ITEMS**

<b>Discussion Topic</b>	<b>Discussion Items</b>
<b>A201 and 00811-OSE</b>	<ol style="list-style-type: none"> <li>1. 00811-OSE, Subparagraph 3.7.1: Requirements for general contractors to obtain business and other licenses, but not building permits, and the requirements for the contractor to obtain inspection services.</li> <li>2. Review typical and special inspection requirements for the project. Include requirements for the contractor to notify the appropriate inspecting entity when the construction is ready for a particular inspection.</li> <li>3. A201 &amp; Supp. Cond, Article 11, Insurance and Bonds: <ol style="list-style-type: none"> <li>a. Bidders should verify their ability to comply with all insurance and bonding requirements of the project prior to submittal of their bid.</li> <li>b. Supp. Cond, Subparagraph 11.1.5: Contractor's aggregate limits of Liability Insurance shall apply in total to this contract only. This requirement shall be identified on the insurance certificate or by an attached policy amendment.</li> </ol> </li> <li>4. A201, Paragraph 11.4, Agency's Property Insurance: Bidders should use the Agency's policy information to determine their risk during construction. The Agency's policy covers only work owned by the agency at the time of loss.</li> </ol>
<b>Process for Bid Acceptance</b>	<ol style="list-style-type: none"> <li>1. It is the intent of the agency to award a Contract for the lowest responsive bid submitted by a responsible bidder.</li> <li>2. In order to establish a clear and definitive low bidder when the bidding documents include bid alternates, the following process as defined in 00201-OSE, paragraph 5.4.2 shall be used: <ol style="list-style-type: none"> <li>a. The apparent low bidder will be determined by combining each bidder's base bid amount and the amount(s) for each bid alternate. The bidder who bids the lowest total price for the base bid plus bid alternates shall be deemed the lowest bidder.</li> <li>b. Provided the Agency determines the apparent low base bidder to be both responsive and responsible, the Agency shall have the right to award a contract to the apparent low bidder based on any combination of alternates or no alternates, unless otherwise specifically provided in the bidding documents.</li> </ol> </li> </ol>
<b>Closing Comments</b>	<ol style="list-style-type: none"> <li>1. Remind all attendees to sign the sign-in sheet, if required, and provide all other requested information on the sign-in sheet before leaving the pre-bid.</li> <li>2. Emphasize the following: <ol style="list-style-type: none"> <li>a. Late bids shall be rejected as nonresponsive.</li> <li>b. Bids without proper bid security, when required, shall be rejected as nonresponsive.</li> <li>c. Bid Bonds, if submitted, must be written on SE-335 without exception. A valid electronic bid bond is considered to be on the proper form.</li> <li>d. Qualified bids shall be rejected as nonresponsive.</li> <li>e. Bid <u><b>ALL</b></u> alternates included on the bid form provided.</li> <li>f. List <u><b>ALL</b></u> subcontractors required to be listed on the bid form.</li> </ol> </li> <li>3. Open the pre-bid meeting for questions by bidders.</li> <li>4. Questions after the pre-bid conference and during the bidding stage concerning OSE front-end documents should be directed to the A/E who will, when required, discuss with the OSE. <ol style="list-style-type: none"> <li>a. The A/E will, when necessary, provide answers to questions and other clarifying information to bidders by addendum.</li> <li>b. All lines of communication during the bidding stage should be through the A/E.</li> </ol> </li> </ol>



## 6.8 BID CANCELLATION

- A. The Invitation for Bids may be canceled by written addendum at any time prior to the time set for the bid opening.
- B. The addendum may be issued as late as the time set for the opening of bids. It is recommended that the addendum be sent to all who are known to have received bid documents as soon as the agency determines that the bid opening will be canceled.
- C. When time permits, notification of the cancellation of bids shall be advertised in *SCBO*.

## 6.9 BID OPENINGS

- A. All Bids (including modifications) received prior to the time of opening shall be kept secure and unopened, except that unidentified bids may be opened solely for the purpose of identification.
  - 1. The person opening the unidentified bid shall be officially designated that responsibility by the Chief Procurement Officer, the Agency procurement officer or a designee.
  - 2. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his signature and position on the envelope and deliver it to the aforesaid official. This official shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bids' number and his signature, and then shall immediately reseal the envelope.
- B. Bid openings shall be open to the public.
- C. At the time set for the bid opening, as indicated on the SE-310, or as modified by addendum, the agency shall declare that the time for receipt of bids has arrived and that no bids shall be accepted thereafter.
  - 1. Bids presented after this time shall be considered late and rejected as being nonresponsive.
  - 2. Late bids shall be returned to the bidders unopened.
- D. Bids not rejected shall be opened individually and read in the presence of one or more witnesses.
- E. When only one bid is received, the bid shall be opened, read aloud and considered.
- F. Bid security, if required, shall be submitted in the bid envelope either as a:
  - 1. Certified check; or,
  - 2. SE-335; or,
  - 3. Electronic Bid Bond Authorization Number.

**NOTE:** For additional information concerning bids without proper bid security, see Paragraph 6.14.B, Bid Irregularities.

- G. Bids shall be checked for acknowledgment of all addenda.

**NOTE:** For additional information concerning bidders who do not acknowledge all addendum, see Paragraph 6.14.B, Bid Irregularities.

- H. The following information should be publicly read aloud and recorded on a bid tabulation sheet:
  - 1. The names of the person opening and reading bids and of the witness(es).
  - 2. Name of the bidder;
  - 3. Compliance with bid security requirements;
  - 4. Acknowledgment of all addenda;
  - 5. Base Bid amount;
  - 6. *(If alternates are included)* Alternate(s) bid amount(s);



7. Names of all subcontractors listed for the Base Bid (and for Bid Alternates, if Bid Alternates are requested).

**NOTE:** If a bid that is opened is found to be nonresponsive, this condition shall be indicated on the bid tabulation sheet.

- I. The following announcements shall be made after the reading of the bids:
  1. The expected date and location of the posting of the SE-370;
  2. A copy of the SE-370, after posting, will be mailed to all bidders;
  3. A copy of the bid tabulation will be mailed to all bidders within 10 working days of the bid opening; and
  4. Thanks to all bidders for submitting bids.
- J. At the conclusion of the bid opening and prior to the posting of the SE-370, the Agency shall verify that:
  1. The bid security of each bidder complies with the requirements of paragraph 4.2 of the 00201-OSE. Refer to paragraph 6.14(B)(6) of this Manual;

**NOTE:** To check the authenticity of an electronic bid bond, go to the Surety2000 web site ([www.surety2000.com](http://www.surety2000.com)) to register (as an Owner/Obligee) and follow the links to match the electronic bid bond number provided on page BF-4 of the SE-330. Check the listed surety company against the OSE web site to determine compliance with paragraph 4.2 of the 00201-OSE.

  2. The apparent low bidder and all listed subcontractors have the proper South Carolina Contractor's licenses to execute a contract for the project;
  3. The lowest responsive bidder meets the State standards of responsibility as enumerated in Article 6 of the 00201-OSE. Refer to paragraph 6.15.B; and
  4. Other requirements specific to the project have been met.
- K. In the event an Agency is prevented from receiving bids by reason of force majeure or an act of God, the bid opening will occur on the next business day at the time originally specified.

## 6.10 BID ACCEPTANCE PERIOD

- A. Bids, including Bid Alternates, shall be open for acceptance for the full time period indicated on the Form SE-330.
- B. The Agency may extend the bid acceptance period as follows:
  1. If a Form SE-370 has been posted, the Agency shall obtain a written extension of the bid price(s) from the prospective contractor and the next two lowest responsive and responsible bidders.
  2. If a Form SE-370 has not been posted, the Agency shall obtain a written extension of bid prices(s) from all bidders.
  3. Any bidder who fails to agree in writing, prior to the expiration of the current bid acceptance period, to extend its bid price(s) without modification shall be considered to have withdrawn its bid from consideration, after the expiration of the original bid acceptance period. Such withdrawal shall be without penalty.
- C. The Agency may consider for award only the bids of those bidders who have provided a written extension of their bids.
- D. Any action to extend the bid acceptance period must be taken prior to the expiration of the current acceptance period.
- E. If the Agency fails to obtain a written extension of at least one bid prior to the expiration of the current acceptance period, the project shall be rebid.



## **6.11 BID WITHDRAWAL OR CORRECTION**

- A.** Prior to the time of the bid opening, any bidder may correct or withdraw his bid. No action shall be taken against the bidder or the bid security.
- B.** After the bids are opened:
  - 1. They shall be irrevocable for the period specified in the Bidding Documents;
  - 2. No change to the bid prices or other provisions of the bid that are prejudicial to the State or fair competition shall be permitted;
  - 3. Correction of a bid mistake that would cause a bidder to have the low bid shall not be permitted, unless the mistake, in the judgment of the State Engineer or the Agency's procurement officer, is clearly evident from examining the bid document (i.e.; extension of unit prices or errors in addition); and
  - 4. A request by a bidder to withdraw a bid must be submitted in writing to either the State Engineer or the Agency's procurement officer. Each request shall document the fact that the bidder's mistake is clearly an error that will cause him substantial loss.
  - 5. If a bidder withdraws his bid without the Agency's approval, then the Agency shall retain his bid security.
  - 6. If the Agency allows a bidder to withdraw his bid because of the bidder's mistake, the Agency shall return the bid security to the bidder. In the case of an electronic bid bond, no action is required by the Agency.
  - 7. If a bidder will not enter into a contract with the Agency, then the Agency shall retain the bid security. If the security is a bid bond, the Agency shall comply with the conditions of the SE-335.

## **6.12 REJECTION OF ALL BIDS BY THE AGENCY**

- A.** After the bid opening, but prior to posting the SE-370, the Agency procurement officer may reject all bids by determining in writing one or more of the following reasons:
  - 1. Inadequate or ambiguous specifications were cited in the invitation for bids;
  - 2. Specifications have been revised;
  - 3. The supplies or services being procured are no longer required;
  - 4. The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
  - 5. Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
  - 6. All otherwise acceptable bids received are at unreasonable prices;
  - 7. The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
  - 8. For other reasons for which rejection is clearly in the best interest of the State.
- B.** All determinations to reject bids shall be in writing and shall state the reasons therefor.
  - 1. A copy of the determination shall be posted on the date and at the location given at the bid opening for the posting of the SE-370.
  - 2. A copy shall also be mailed to the State Engineer and to all bidders, along with their bid security.



### 6.13 RE-BIDDING OF PROJECTS

- A. If the Agency determines that it is necessary to reject all bids, the project may be re-bid.
- B. The scope of the construction documents shall be modified significantly prior to being released for re-bidding. If the Agency does not intend to modify the scope, the re-bidding shall be delayed for a period of not less than three months, subject to OSE approval.
- C. A new SE-310 shall be prepared with the following revisions:
  - 1. The word "RE-BID" shall be added above the title 'Invitation for Construction Bids';
  - 2. Any change in the scope of work shall be included in the project description;
  - 3. The new pre-bid conference shall be indicated as mandatory or non-mandatory; and
  - 4. New dates for the pre-bid and the bid shall be included.
- D. For contracts exceeding Agency construction certification, the new SE-310 shall be submitted to the OSE for approval and advertisement in *SCBO*.

### 6.14 AGENCY DETERMINATION OF BIDDERS' RESPONSIVENESS

- A. Bid Security
  - 1. Bid Security is required for all competitive sealed bids for all construction contracts in excess of \$50,000 and such other contracts as may be identified in the SE-310.
  - 2. Bid Security shall be in an amount not less than five percent of the Base Bid and shall be made payable to the Agency.
  - 3. Bid Security shall be either a certified cashier's check or Bid Bond.
    - (a) Bid Bonds shall be written on Form SE-335, either in the form of a paper copy or electronic Bid Bond authorization number) and issued by a Surety Company licensed to conduct business in the State of South Carolina.
    - (b) Unless otherwise noted in the Bid Documents ( 00201-OSE), the Surety Company shall have an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability". In addition, the surety shall have a minimum "Best Financial Strength Category" of "Class V", and in no case less than five (5) times the contract amount.

**NOTE:** An updated list of surety companies believed to meet the above requirements may be found at the OSE Website at the following Web address:

<http://www.state.sc.us/mmo/ose/bondnam.pdf>

  - 4. Each paper Bid Bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the Surety.
  - 5. If a bidder is found to be nonresponsive or nonresponsible, then the bid security shall be returned to the bidder without penalty.
- B. Evaluation of Bid Irregularities
  - 1. Bids shall be rejected as nonresponsive for the following reasons, but not limited to:
    - (a) Failure by a bidder to be represented at a mandatory pre-bid conference or site visit;
    - (b) Failure to deliver the bid on time;
    - (c) Failure to provide bid security as required;
    - (d) Listing an invalid electronic Bid Bond Authorization number on the bid form,
    - (e) Failure to bid an alternate;



- (f) Failure to list subcontractors as required by law;
  - (g) Showing any modification(s) or exception(s) qualifying the bid;
  - (h) Faxing a bid directly to the Agency or its representative;
  - (i) Failure to include in the bid envelope all items required by the bid documents;
  - (j) Failure to include a properly executed Power-of-Attorney with a bid bond.
2. Bids shall not be rejected for minor informalities (irregularities) in the bid that may be corrected by the bidder when requested by the agency, or may be waived by the agency where it is to the advantage of the State.
- (a) The request to correct or the determination to waive shall be in writing to the contractor.
  - (b) Failure by the bidder to correct any deficiency as requested may cause the bid to be rejected as nonresponsive.
  - (c) Minor informalities (irregularities) in the bid include, but are not limited to, the following:
    - (1) Failure to write "Sealed Bid Enclosed" on the outside of the mailing envelope;
    - (2) Failure to seal the bid envelope;
    - (3) Listing a modification to the bid on the outside of the bid envelope (however, such modifications will not be considered);
    - (4) Failure to list any information on the envelope other than that which may be required by law;
    - (5) Providing a fax copy or other reproduction of any or all bidding documents in the bid envelope;
    - (6) Failure to indicate for an alternate "ADD" or "DEDUCT", but only when the adjustment to the Base Bid is obvious;
    - (7) Failure to provide a unit price when requested on the bid form;
    - (8) Providing additional listings of "Subcontractor Specialty" beyond those listed on the bid form;
    - (9) Failure of the bidder to sign the bid, provided it is accompanied by a properly prepared bid security, or other information, as required by 00201-OSE;
    - (10) Providing a reproduction of a signature on any or all bidding documents;
    - (11) Failure of the corporation to include its seal on the bid; and
    - (12) Bid bond not signed by the bidder but only if the bond has been properly executed and signed by the bonding company or agent.
    - (13) Immaterial variations from the exact requirements.
3. Failure to Acknowledge Addenda
- (a) Bids shall be rejected as non-responsive for failure to acknowledge all addenda, except as follows:
    - (1) The addendum clearly would have no effect on the order of the bidders.
    - (2) The bid received clearly indicates that the bidder received the addendum, such as where the addendum added another item to the invitation for bids and the bidder submitted a bid thereon.
    - (3) The addendum clearly would have had no effect or merely a trivial or negligible effect on price, quality, quantity or delivery.
      - "Trivial or negligible effect" shall be interpreted to mean an increase of the base bid not exceeding one percent.
      - There is no percentage limit if the addendum decreases the contract cost.
    - (4) The addendum only gives clarifications and/or lists attendees at a mandatory pre-bid conference.
  - (b) The value of the addendum shall be determined by the A/E or the Agency's procurement officer.



**4. Late Bids**

- (a) Late bids shall be rejected as being nonresponsive and shall be returned unopened.
- (b) Bids sent by mail or other special delivery service (UPS, FED-EX, etc.) must be received at the address indicated in paragraph 9.2 of the 00201-OSE, or the Agency's mail room, prior to the time of the bid opening.
  - (1) Bids received at the proper location by the time of the bid opening shall be considered even if not opened during the reading of the bids.
  - (2) Bids not received at the indicated location, or the Agency mail room, prior to the time of the bid opening, shall be rejected as being non-responsive and returned to the bidder unopened.
- (c) If the Agency discovers a bid after the public bid opening, the Agency shall contact the OSE for assistance. The circumstances shall be documented in writing with a copy placed in the agency's procurement file.

**5. Bid Envelope**

- (a) Multiple bids within the same envelope shall be resolved by accepting only the lowest responsive bid.
- (b) Bids shall be rejected if any item required to be submitted with the bid is not included in the bid envelope, except those items listed in Paragraph 6.14.B.2.
- (c) A modification to the bid on the outside of the bid envelope will not be considered. Modifications to the bid must be made on the bid form prior to the time of bid opening.

**6. Bid Security**

- (a) When bid security is required, it shall be contained within the bid envelope at the time of the bid opening.
- (b) Bidders submitting a bid security not meeting the required amount or surety rating and financial strength shall have one working day from the bid opening to cure the deficiency or the bid shall be considered nonresponsive.
  - (1) Bid security amount must be at least 80% of the required amount to be eligible for correction (see the 00201-OSE).
  - (2) "One working day" shall be defined as the day after the bid opening until the closing time of the Agency's facility that receives the bids.
    - If a bid opening is on Friday, the next working day will be the following Monday.
    - If the day after the bid opening is a holiday, then the next working day following the holiday will be the day allowed for correcting a bid security deficiency.
  - (3) Acceptable types of bid security shall include a cashier's check, made payable to the agency, or a bid bond (paper copy or electronic Bid Bond authorization number). Personal checks or letters of credit are not acceptable.
  - (4) All paper bid bonds submitted without a Power of Attorney shall be rejected. Copied or faxed bid bonds and Powers of Attorney are acceptable, but must be included in the bid envelope.

**7. Tie Bids**

If two or more bidders are tied in price, while otherwise meeting all of the required conditions, awards are to be determined as follows:

- (a) If there is a South Carolina firm tied with an out-of-state firm, the award must be made automatically to the South Carolina firm.
- (b) Tie bids involving South Carolina firms must be resolved in favor of the South Carolina firm located in the same taxing jurisdiction as the project's location.
- (c) Tie bids involving South Carolina firms in the same taxing jurisdiction as the project's location must be resolved by the flip of a coin in the offices of the State Engineer or the head of the purchasing Agency or either officer's designee, witnessed by all interested parties.



## 6.15 AGENCY DETERMINATION OF BIDDERS' RESPONSIBILITY

- A. Before posting an SE-370, the Agency must be satisfied that the prospective contractor meets the State's Standards of Responsibility.
- B. Criteria to be used in determining whether the State's Standards of Responsibility have been met include whether a prospective contractor has:
  - 1. Available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate his capability to meet all contractual requirements;
  - 2. A satisfactory record of performance;
  - 3. A satisfactory record of integrity;
  - 4. Qualified legally to contract with the State (includes being properly licensed);
  - 5. Supplied all necessary information in connection with the inquiry concerning responsibility.
- C. Proper Contractor Licensing and Limitations:
  - 1. All prime bidders and listed subcontractors bidding on a project are required to have the proper license and limitations at the time of the bid opening. It is the Agency's responsibility to verify this prior to posting the SE-370.
  - 2. If the Agency determines that a prime bidder or listed subcontractor does not have the proper license and limitations, the bidder shall be determined to be non-responsible. The Agency shall notify the S.C. Contractors' Licensing Board .
  - 3. South Carolina Contractor's licenses are regulated by the following agency:  
 Department of Labor, Licensing and Regulation (LLR)  
 Division of Professional and Occupational Licensing  
 Contractors' Licensing Board  
 Kingstree Building  
 110 Centerview Drive  
 Columbia, South Carolina 29210      Telephone: (803) 896-4686 FAX: (803) 896-4364
- D. If an Agency is uncertain about a prospective contractor's responsibility, they shall require the prospective contractor to complete Form SE-350 and provide any other information to support the agency's determination.
  - 1. The Agency shall complete the project/Agency information on page 1 of the SE-350, and shall send the SE-350 to the contractor by certified mail with return receipt requested.
  - 2. The contractor has seven days from the date of receipt of the SE-350 to complete and deliver the SE-350 to the awarding Agency.
    - (a) The SE-350 must be received by the Agency no later than the close of business on the seventh day.
    - (b) Failure of the prospective contractor to supply complete and accurate information with respect to responsibility may be grounds for a determination of nonresponsibility. The minor omission of information or a technicality should not be the sole determination of nonresponsibility.
  - 3. Upon receipt of the SE-350 and other requested information from the prospective contractor, the Agency shall verify the information contained therein, combined with any information available to the Agency, to determine if the prospective contractor is deficient in one or more of the criteria listed in paragraph 6.15.B.
- E. If a prospective contractor is determined to be responsible, then the Agency may proceed with the posting of the SE-370.



- F. If a prospective contractor, who otherwise would have been awarded a contract, is found to be nonresponsible:
  - 1. A written determination of non-responsibility setting forth the basis of the findings shall be prepared by the Agency's procurement officer;
  - 2. A copy of the written determination shall be sent promptly to the nonresponsible bidder and to the OSE;
  - 3. The final determination shall be made part of the agency's procurement file; and
  - 4. The Agency may award the contract to the next lowest responsive and responsible bidder, if the bid is within the Agency's construction budget.
- G. If the lowest responsive and responsible bid exceeds the Agency's construction budget, the Agency shall:
  - 1. Obtain additional funds to permit the award of the contract;
  - 2. Negotiate with the contractor as allowed by and in accordance with Paragraph 6.16; or
  - 3. Reject all bids
- H. Right of Nondisclosure: Except as otherwise provided by SC law, information furnished by a bidder shall not be disclosed outside of the offices of the Board, the Office of the Attorney General, the OSE, or the Agency without prior written consent by the bidder.

## **6.16 NEGOTIATIONS AFTER UNSUCCESSFUL BIDDING**

- A. Negotiations with the lowest responsive and responsible bidder are permitted when all of the following conditions are met:
  - 1. Bids received pursuant to an invitation for bids exceed the Agency's construction budget for the project and the Agency is unwilling or unable to increase the construction budget.
  - 2. It is determined in writing by the Agency that circumstances will not permit the delay required to re-solicit competitive sealed bids.
  - 3. The low bidder's Base Bid, less any deductive alternates, does not exceed the Agency's construction budget by an amount greater than five percent of the construction budget established for that portion of the work.
- B. The Agency may change the scope of the work to reduce the cost to be within the established construction budget, but they shall not reduce the cost below the established construction budget by more than ten percent, without a written request by the Agency and the written approval of the State Engineer. The request shall be in the best interest of the State.
- C. Substitution of sub-contractors shall not be used as a means to negotiate a reduction in the contract amount.
- D. Upon completion of successful negotiations with the contractor, the Agency shall submit the following to the OSE along with the SE-380:
  - 1. Written documentation declaring the reason(s) for negotiation;
  - 2. The results of the negotiation; and
  - 3. A description of the changes made to the scope of the project.

## **6.17 NOTICE OF INTENT TO AWARD AND BID TABULATION**

- A. A Notice of Intent to Award (Form SE-370) is required when a contract is procured under competitive sealed bidding.



- B. The Notice of Intent To Award is required to be:
  - 1. Posted after the Agency's determination that the prospective contractor is the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Construction Bids.
  - 2. Posted at the time and in the location announced at the bid opening.
  - 3. Sent promptly by first class mail to all bidders responding to the solicitation.
  - 4. Posted within the bid acceptance period indicated on the SE-330, or as extended.
- C. The Agency shall not post the SE-370 for a PIP project unless the most recently approved Form A-1 has authorized, unencumbered funds sufficient to cover the full amount of the contract plus construction contingencies.
- D. If an Agency is unable to confirm an intent to award on the posting date announced at the bid opening, a notice shall be posted on that date at the specified location stating the new date the SE-370 will be posted.
- E. The Agency shall prepare a final Bid Tabulation consisting of the following information:
  - 1. Project name and number;
  - 2. Agency name;
  - 3. Names of the persons opening bids and the witness(es), each of whom shall initial the Bid Tabulation sheet(s);
  - 4. List of all contractors submitting bids;
  - 5. Acknowledgment of addenda;
  - 6. Inclusion of proper bid security;
  - 7. Base Bid amount;
  - 8. Alternate Bid amounts (*if project has alternates*); and
  - 9. Listing of subcontractors for Base Bid and Alternates (*if project has alternates*).
  - 10. The reason(s) for declaring any bid(s) nonresponsive.
- F. The Agency shall, within 10 working days of the bid opening, send copies of the final Bid Tabulation by first class mail to:
  - 1. All of the bidders that submitted a bona fide bid; and
  - 2. The OSE.

## 6.18 CONTRACT EXECUTION WAITING PERIOD

- A. When a contract is procured by competitive sealed bidding, the Agency, after approval of the SE-380, may enter into a contract with the lowest responsive and responsible bidder on the 16th day after the posting date of the SE 370. During this time, any bidder who is aggrieved and wishes to protest the contract award, may do so in writing to the State Engineer (see Chapter 1).
- B. If only one bid is received and the bid is determined to be responsive and responsible and within the Agency construction budget, the Agency may, after approval of the SE-380, award the contract without the 16 day waiting period. The SE-370 shall still be posted by the Agency and a copy sent to the bidder.

## 6.19 PERFORMANCE AND LABOR & MATERIAL PAYMENT BONDS

- A. A Performance Bond and a Labor and Material Payment Bond are required for all construction contracts in excess of \$50,000 and such other contracts identified in the SE-310.



1. Performance Bonds shall be written on the SE-355 and Labor and Material Payment Bonds shall be written on the SE-357.
  2. Bonds shall be issued by a surety company licensed in South Carolina.
  3. Unless otherwise noted in the Bid Documents (00201-OSE), the Surety shall have an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability" which shall show a financial strength rating of Class V and in any event at least five times the Contract price.
  4. Bonds issued by associated surety companies must have the following:
    - (a) The name of both surety companies listed on the bond forms; and
    - (b) The relationship of the surety companies (i.e., co-sureties or re-insurer with a "cut-through" agreement) clearly defined on the bond forms; and
    - (c) Both of the surety companies licensed in South Carolina; and
    - (d) One of the surety companies with an "A" minimum performance rating and a financial strength rating of Class V and in any event at least five times the Contract Sum.
  5. A list of surety companies believed to meet the licensing and rating requirements of items 2 and 3 can be found on the OSE Website at the following address:

<http://www.state.sc.us/mmo/ose/bondnam.pdf>.
- B.** Each bond shall be accompanied by a 'Power of Attorney' authorizing the attorney-in-fact to bind the surety. In the case of associated surety companies, the bonds must be accompanied by a Power of Attorney from each company.
- C.** Each bond shall be issued for the full construction contract amount. Change orders that increase the contract amount require the contractor to increase the value of the bonds by the amount of the change order.
- D.** Any claim under the Performance Bond must be made prior to two years from the date on which final payment under the contract is made.
- E.** Any claim under the Labor and Material Payment Bond must be made prior to one year from the date on which the contractor ceased work under the contract.
- F.** The Agency may waive bonding requirements for projects under \$50,000 if the Agency has protected the State. The OSE cautions the Agency against waiving bonding and recommends bonds on all projects, when practical.

## **6.20 INSURANCE TO BE PROVIDED BY THE CONTRACTOR**

- A.** On all state projects, the contractor is required to provide Liability Insurance on a Commercial basis and shall include all major divisions of coverage including the following:
1. Premises - Operations.
  2. Independent Contractor's Protective.
  3. Products and Completed Operations.
  4. Personal and Advertising Injury.
  5. Contractual, including specified provision for Contractor's obligations under Paragraph 3.18 of the A201 and the 00811 – OSE.
  6. Broad Form Property Damage, including Completed Operations.
  7. Owned, non-owned and hired motor vehicles.



- B.** The insurance required above shall be written for not less than the following limits, or greater if required by law or other provisions of this contract:

**1.** Commercial General Liability:

<b>(a)</b> General Aggregate (per project)	\$1,000,000
<b>(b)</b> Products/ Completed Operations	\$1,000,000
<b>(c)</b> Personal and Advertising Injury	\$1,000,000
<b>(d)</b> Each Occurrence	\$1,000,000
<b>(e)</b> Fire Damage (Any one fire)	\$50,000
<b>(f)</b> Medical Expense (Any one person)	\$5,000

**2.** Business Auto Liability (including All Owned, Non-owned, and Hired Vehicles):

<b>(a)</b> Combined Single Limit	\$1,500,000
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OR

<b>(b)</b> Bodily Injury & Property Damage (each)	\$750,000
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**3.** Worker's Compensation (Required if more than 3 employees):

<b>(a)</b> State	Statutory
<b>(b)</b> Employers Liability	\$100,000 Per Accident \$500,000 Disease, Policy Limit \$100,000 Disease, Each Employee

**NOTE:** For projects with HAZARDOUS MATERIALS add the following: Pollution Liability Insurance (including Abatement and Transportation) shall be written on a per project basis with a coverage of \$1,000,000 with a deductible of \$5,000 for any one occurrence.

- C.** The insurance shall be written on an Occurrence basis. The aggregate limits of insurance shall apply, in total, to only the contract for which it is being written. This shall be indicated on the insurance certificate or an attached policy amendment.
- D.** An acceptable certificate of insurance is the ACORD FORM 25S, Commercial General Liability policy form, latest edition, with ISO endorsement CG 25 03, Amendment - Aggregate Limits of Insurance (Per Project), latest edition.
- E.** The Agency shall, if requested, provide the bidder and/or successful contractor with a copy of the Agency's Builders' Risk and Property Insurance. The bidder and/or contractor should use these policies to determine his risk under the proposed contract, and the successful contractor should then obtain additional insurance necessary to protect his "at risk" interests. Additional protection should cover himself, his subcontractors and his sub-subcontractors on the job.

## **6.21 INSURANCE TO BE PROVIDED BY THE AGENCY**

- A.** The Agency is required to maintain Property Insurance on all state-owned facilities. Property Insurance on state-owned facilities is issued by the Insurance Reserve Fund with endorsements for earthquake and flood insurance. Contact the Insurance Reserve Fund for more information.
- B.** The Agency is required to purchase Builders' Risk Insurance from the Insurance Reserve Fund for construction projects which are state owned. The policy is usually the same amount as the contract award for the construction project.
- C.** For small projects, the Agency should check with the Insurance Reserve Fund to determine the need for Builders' Risk Insurance. The Agency's existing Property Insurance may satisfy the Builders' Risk Insurance need when all the following conditions are met:
- 1.** The amount of the new construction is less than \$250,000;
  - 2.** The time of construction is less than 30 days; and,



3. The new construction contract amount is less than 25% of the existing property insured value.
- D. The Agency's Builders' Risk Insurance and Property Insurance issued by the Insurance Reserve Fund only protects the interests of the State, and does not cover any non-state entities, including contractors, subcontractors, or suppliers. The Insurance Reserve Fund may attempt to recover its losses from a party that can be determined to be at fault and /or negligent.
- E. Builder's Risk Insurance covers the building or structure described in the Declaration, including the following:
  1. Foundations;
  2. If intended to become a permanent part of the building or structure described in the Declarations, the following property located in or on the building or structure or within 100 feet of its premises:
    - (a) Fixtures, machinery and equipment used to service the building; and,
    - (b) Building materials and supplies used for construction.
  3. If not covered by other insurance, temporary structures built or assembled on site, including cribbing, scaffolding and construction forms.
- F. Builders' Risk Insurance does not include:
  1. Land or water;
  2. The following property when outside of buildings:
    - (a) Lawns, trees, shrubs or plants;
    - (b) Radio or television antennas, including their lead-in wiring, masts or towers; or
    - (c) Signs (other than signs attached to buildings).
  3. Additional coverage provided by the Builders' Risk Insurance include:
    - (a) Debris removal (up to \$5,000 per location);
    - (b) Preservation of property (loss or damage to property being moved or temporarily stored);
    - (c) Fire Department service charge (up to \$1,000); and
    - (d) Pollutant clean up and removal (up to \$10,000).
- G. Various provisions in the Agency's Builders' Risk and Property Insurance policies restrict coverage. The Agency should be sure to read the entire policy to determine rights, duties and what is and is not covered. Contact the Insurance Reserve Fund for a copy of the insurance policies and/or additional information.

## **6.22 OSE REVIEW AND APPROVAL OF CONSTRUCTION CONTRACTS**

- A. Construction Projects Bid and Awarded Within Agency Construction Certification
  1. The OSE does not review and approve construction contracts within an agency's construction certification, except as noted in Paragraph 6.25, provided that the Agency is using OSE-approved contract documents.
  2. After expiration of the contract execution waiting period (see Paragraph 6.18), the Agency may execute a contract with the lowest responsive and responsible bidder whose bid was within the Agency's construction budget.
  3. One signed copy of the construction contract shall be sent to the contractor immediately after execution of the agreement by the Agency.



**B. Construction Projects Bid and Awarded Above Agency Construction Certification**

1. The Agency shall submit the proposed contract for OSE's review and approval using Form SE-380. An Agency shall not execute a contract exceeding their construction certification until the contract execution is authorized by the State Engineer.
2. The Agency's awarding authority shall sign and date the Form SE-380 before submission to OSE.
3. The Agency shall submit the following documentation to the OSE: *(one copy only, unless otherwise noted)*
  - (a) SE-380 (original and 1 copy);
  - (b) SE-330 of the low bidder;
  - (c) Bid Security of the low bidder with Power of Attorney *(if required by project)*;
  - (d) Final Bid Tabulation;
  - (e) SE-370;
  - (f) The proposed construction contract, signed by the prospective contractor only;
  - (g) Performance Bond with Power of Attorney (see Paragraph 6.19) *(if required by project)*;
  - (h) Labor and Material Payment Bond with Power of Attorney (see Paragraph 6.19) *(if required by project)*;
  - (i) SE-385, with attachments (four completed copies).
4. The OSE will review the submitted information and, if approved, will return a copy of the signed SE-380 and three signed copies of the SE-385 to the Agency after the expiration of the 16-day waiting period.
5. For additional information concerning projects bid within the Agency construction certification, but with the low bid exceeding the Agency construction certification, see Chapter 3.

**6.23 NOTICE TO PROCEED**

- A. A Form SE-390 shall be issued for all contract awards whether within or over the Agency construction certification.
  1. When the contract is within the Agency construction certification:
    - (a) The Agency shall sign and deliver to the contractor one copy of the construction contract.
    - (b) The Agency shall attach an SE-385, approved by the individual designated as the Agency's Building Official, (including all attachments) to each of three sets of the construction plans. One set shall be issued to the Contractor to maintain on the job site; one shall be issued to the entity providing the typical inspection services; and one set shall be maintained by the Agency's facilities management office.
    - (c) The Agency normally should send the SE-390 to the contractor after the construction contract has been executed. Issuing the SE-390 to the contractor prior to executing the contract constitutes a de facto contract execution and may represent an unauthorized procurement or expose the Agency to damages if the contract must be terminated for any reason.
  2. When the contract is over the Agency's construction certification:
    - (a) The Agency shall sign and deliver a copy of the executed contract to the contractor and the OSE.
    - (b) The Agency shall attach an approved SE-385 (including all attachments) to each of three sets of the construction plans. One set shall be issued to the Contractor to maintain on the job site; one shall be issued to the entity providing the typical inspection services; and one set shall be maintained by the Agency's facilities management office.



- (c) The Agency shall send the SE-390 to the contractor only after the SE-380 has been approved by the OSE.
  - (d) The Agency shall send a copy of the SE-390 to the OSE on the same day it is mailed to the contractor.
  - (e) Issuing the SE-390 to the contractor prior to executing contract constitutes a de facto contract execution and may represent an unauthorized procurement or expose the Agency to damages if the contract must be terminated for any reason.
- B. The Date of Commencement shall be established in the SE-390 and shall be used for determining the date(s) of Substantial and Final Completion and the application of any Early Completion Award or Liquidated Damages.
  - 1. The Date of Commencement should be set at least 7 days after the date of the Notice to Proceed to allow the Contractor to mobilize its work forces.
  - 2. The Contractor must commence physical work on the project within 14 days of the Date of Commencement or the Agency is entitled to consider the Contractor in breach of its contract obligations.
- C. The Agency shall, if requested, send one copy of the agency's Property Insurance Certificate to the contractor.

## **6.24 RETURN OF BID SECURITY AND DISPOSITION OF BIDS**

- A. Bid security should be returned to bidders within 10 days after the date of the bid opening, except for the three lowest responsive and responsible bidders.
- B. Upon execution of a contract, the bid securities of the three lowest bidders should be returned.
- C. The Agency shall retain all bids until the contract is executed.
- D. The bid of the successful bidder shall be retained in the Agency's procurement file.

## **6.25 INDEFINITE DELIVERY CONTRACTS FOR CONSTRUCTION**

- A. Indefinite Delivery Contracts (IDC's) for construction may be awarded on an as-needed basis.
  - 1. These contracts shall be limited to a total expenditure of \$750,000 for a two year period, with individual project expenditures not to exceed \$150,000.
  - 2. These limits for the overall contract and individual projects shall not be exceeded.
  - 3. Using appropriate Delivery Orders, agencies willing to assume the responsibilities of construction management may combine the work of several specialized IDC contractors on a single project, however a single project limit of \$300,000 applies to the total of all Delivery Orders issued towards that project, unless otherwise approved by the OSE.
- B. IDC's for construction shall be procured by competitive sealed bidding. Refer to Appendix E for bidding procedures for IDC's for construction.
- C. The Construction Documents for any individual Delivery Order that has an estimated cost above the Agency's construction certification shall be submitted to the OSE for building code review before award to the contractor.
- D. The Agency shall submit to the OSE quarterly reports on construction IDC's. Each report shall contain, as a minimum, the following:
  - 1. State IDC project number;
  - 2. A list of delivery orders issued under the IDC with the following:
    - (a) Delivery order number;
    - (b) Brief description of scope of work for each delivery order;



- (c) PIP or Non-PIP project number from which fees are paid; and
  - (d) Total amount paid per delivery order.
- E. Contractors who are awarded construction IDC's are required to be licensed to the level of the maximum delivery order (\$150,000). Agencies shall not split projects in order to avoid licensing requirements.

## 6.26 PREQUALIFICATION OF CONSTRUCTION BIDDERS



- A. Refer to Appendix I for procedures and criteria for prequalification of construction bidders.
- B. An Agency may prequalify bidders only for projects where the construction is unique in nature, or in excess of ten million dollars in value, as determined by and subject to the approval of the OSE.
- C. The prequalification process shall be under the supervision of the OSE.
- D. Only those bidders who are prequalified through the OSE prequalification procedure may submit a bid. The determination of which bidders are prequalified, and thereby entitled to bid, is not protestable.

## 6.27 DISCLOSURE OF BID INFORMATION

- A. Only the information disclosed at a bid opening is considered to be public information under the Freedom of Information Act, Chapter 4 of Title 30, until the SE-370 is issued.
- B. After the bid opening, if requests for rereading of bid information occur, only information read aloud during the bid opening shall be repeated. Bids are not subject to public scrutiny at the bid opening.
- C. The Agency may release to interested parties, such as Dodge and AGC, only information read aloud at the bid opening. The Agency shall state that the information released is for information only and is not an indication of contract award.
- D. Bid information disclosed at a bid opening shall be tabulated and copies mailed to all bidders within 10 working days of the bid opening date.
- E. Release of Cost Information and Information for the Determination of Responsibility.
  - 1. For every document a Bidder submits in response to or with regard to an Invitation for Bids or Quotes, the Bidder must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that the Bidder contends contains information that is exempt from public disclosure because it is either:
    - (a) A trade secret as defined in §30-4-40(a)(1) of the SC Code of Laws, or
    - (b) Privileged and confidential, as that phrase is used in §11-35-410 of the SC Code of Laws.
  - 2. For every document Bidder submits in response to or with regard to an Invitation for Bids or Quotes, the Bidder must separately mark with the words "TRADE SECRET" every page, or portion thereof, that the Bidder contends contains a trade secret as that term is defined by the Trade Secrets Act.
  - 3. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text.
  - 4. If a portion of a bid or other document is improperly marked as "Confidential" or "Trade Secret", the State may, in its sole discretion determine it nonresponsive.

**NOTE:** If only portions of a page are protected, the Bidder shall not mark the entire page.

- 5. By submitting a bid or other document, the Bidder:
  - (a) Consents to the release of documents governed by §11-35-1810 unless the Bidder conspicuously states otherwise on the cover of its bid or other document;
  - (b) Agrees to the public disclosure of any documents regarding the solicitation submitted at any time prior to entering into a contract, including, but not limited to:



- (1) documents contained in a bid;
  - (2) documents submitted to clarify a bid;
  - (3) documents submitted to support a determination of responsibility; and,
  - (4) documents submitted during negotiations, unless the document is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL".
- (c) Agrees that any information not marked, as required by these bidding instructions, as a "TRADE SECRET" is not a trade secret as defined by the Trade Secrets Act, and (4) that, notwithstanding any claims or markings otherwise, any prices used to determine the award are subject to public disclosure.
6. In determining whether to release documents, the State will detrimentally rely on the Bidder's marking of documents, as required by the bidding instructions, as being either "CONFIDENTIAL" or "TRADE SECRET".
7. By submitting a bid, the Bidder has agreed to defend, indemnify and hold harmless the State of South Carolina, its officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that the Bidder marked as "CONFIDENTIAL" or "TRADE SECRET".

## **6.28 EXCEPTIONS TO COMPETITIVE SEALED BIDDING**

- A. Construction-related professional services shall not be procured by competitive sealed bidding. These services shall be procured in accordance with Chapter 4.
- B. Construction contracts \$25,000 or less may be procured as small purchases in accordance with Chapter 8.
- C. Construction-related sole source procurements shall be made in accordance with Chapter 8.
- D. Construction-related emergency procurements shall be made in accordance with Chapter 8.
- E. Other methods listed in paragraph 8.7 of Chapter 8.